



IN THE MATTER OF:)	
)	
ALEXANDER DAVIS,)	
)	
Complainant,)	
)	Charge No.: 2004CF1186
and)	EEOC No.: N/A
)	ALS No.: 04-483
TERRY KLINES and)	
CENTRAL CAN CO.,)	
Respondents.)	

On November 18, 2004, Complainant, Alexander Davis, filed a complaint on his own behalf against Respondents, Terry Klines and Central Can Company. That complaint alleged that Respondents discriminated against Complainant on the basis of a physical handicap when they harassed him. The complaint further alleged that the corporate Respondent, Central Can Company, unlawfully retaliated against him by issuing a written warning when Complainant objected to the illegal harassment.

This matter now comes on to be heard on Respondent's Motion to Dismiss for Lack of Jurisdiction. Although he was served with a copy of the motion, Complainant did not file a written response. In fact, Complainant appeared when the motion was presented and stated that he was not contesting the motion. The matter is ready for decision.

The following findings were derived from the record file in this matter.

1. On or about October 24, 2003, Complainant, Alexander Davis, filed a charge of discrimination against Respondents with the Illinois Department of Human Rights (IDHR).

2. IDHR dismissed Complainant's charge for lack of jurisdiction and lack of substantial evidence on November 9, 2004.

3. Complainant did not file a timely Request for Review on his dismissed charge.

4. On December 28, 2004, Complainant filed his complaint before the Human Rights Commission.

CONCLUSIONS OF LAW

1. IDHR's dismissal of Complainant's charge was a final order disposing of that charge.

2. The Human Rights Commission has no authority to consider the complaint filed by Complainant.

3. The complaint in this matter must be dismissed with prejudice.

DISCUSSION

On or about October 24, 2003, Complainant, Alexander Davis, filed a charge of discrimination against Respondents with the Illinois Department of Human Rights (IDHR). IDHR dismissed that charge for lack of jurisdiction and lack of substantial evidence on November 9, 2004. Complainant did not file a timely Request for Review of IDHR's decision. Instead, on December 28, 2004, Complainant filed a complaint against Respondents before the Human Rights Commission.

Under section 5/7A-102(G)(1) of the Human Rights Act (775 ILCS 5/1-101 *et seq.*), once the time for investigation has run, the IDHR "shall either issue and file a complaint ... or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed." In this case, IDHR determined that no complaint should be issued on the charge. Once that determination was made, Complainant lost any right to file a complaint on his own behalf before the Human Rights Commission. ***Wallace and Human Rights***

Commission, 261 Ill. App. 3d 564, 633 N.E.2d 851 (1st Dist. 1994). At that point, Complainant's only remedy was to file a timely Request for Review.

Because IDHR had already dismissed the underlying charge and ordered that no complaint be filed, and did so before Complainant filed his complaint, the Human Rights Commission never acquired the authority to consider that complaint. As a result, that complaint must be dismissed with prejudice.

RECOMMENDATION

Based upon the foregoing, the Human Rights Commission has no authority to hear the complaint filed in this matter. Moreover, the IDHR has already dismissed the underlying charge. Accordingly, Respondent's motion to dismiss should be granted and the complaint dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: March 1, 2005